



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

Number: **INFO 2002-0132**

Release Date: 9/30/2002

UIL: 3402.05-00

CC:TEGE:EOEG:ET2
GENIN-109465-02



Reference: Withholding Exemption Certificate

Dear [REDACTED]

This letter is written in response to your letter received on February 13, 2002, in which you request information concerning an employer's liability for accepting an employee's executed certificate of exemption from withholding of income taxes as set forth in Internal Revenue Code § 3402(n).¹

As a general matter, the Internal Revenue Service ("Service") is not able to provide binding legal advice applicable to a particular taxpayer unless the procedure for issuing a formal opinion, as described in Revenue Procedure 2002-1, 2002-1 I.R.B. 1, is followed. Your request does not conform to the requirements of Revenue Procedure 2002-1 and, therefore, does not provide the necessary information to issue a formal opinion applying the Internal Revenue Code to your specific facts. However, we are able to provide you with the following general information regarding your question.

Employers are required to withhold federal income taxes from wages paid to their employees pursuant to § 3402(a)(1). Under § 3402(n), an employer is not required to withhold any taxes from an employee's wages if the employee certifies to the employer in a valid withholding exemption certificate that the employee is exempt from income tax withholding.

A valid exemption certificate for purposes of § 3402(n) is a Form W-4 or a substitute form that incorporates the required data according to Regulations § 31.3402(f)(2)-1(e). The employee is required to certify that he incurred no liability for income tax for the preceding taxable year and anticipates that he will incur no liability for income tax for the current taxable year as set forth in § 3402(n).

¹ Hereinafter, all references to sections are applicable to the Internal Revenue Code of 1986, as amended, unless otherwise specified.

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Regulations § 31.3402(f)(2)-1(g)(1) requires an employer to submit to the Service a copy of any withholding certificate received from an employee who will receive wages over \$200 per week and who claims exemption from withholding, together with any written statement in support of the claims made on such certificate. Regulations § 31.3402(f)(2)-1(g)(3) requires an employer to submit such materials at the same time and place where the employer is required to file his Form 941 or 941E.

Under Regulations § 31.3402(f)(2)-1(g)(5), the employer must withhold on the basis of the employee's withholding exemption certificate until the employer receives written notice from the Service that the employee's withholding exemption certificate is defective. If the Service notifies the employer that the certificate is defective and that the employee is not entitled to claim an exemption from withholding, the employer must treat the certificate as defective for purposes of computing amounts of withholding. The employer is then required to withhold amounts from the employee based on the written notice from the Service. The Service will also provide the employer with a copy of its written notice for the employee as well as mail a copy directly to the employee at the address shown on the certificate.

If and when the employee does file a new certificate, the employer is required to withhold on the basis of the new certificate unless the new certificate claims an exempt status from withholding that is inconsistent with the notice furnished by the Service. If the new certificate does make an inconsistent claim, then the employer must disregard it and withhold on the basis of the Service's written notice. The employer should not submit the new certificate to the Service.

However, the employee may attach a written statement to the new certificate relating any new circumstances that may have changed or that show justification or support of the claim based on events occurring subsequent to the date of the Service's written notice. Under these circumstances, the employee may submit the new certificate with the employee's written supporting statement to the Service office specified in the written notice or to the employer, who must submit the information to the Service office specified in the notice. The employer is required to disregard the new certificate and withhold based on the Service's notice until further notification by the Service with regard to the new certificate.

Under § 3403, every employer required to withhold federal income tax under § 3402 is liable for the payment of such tax whether or not it is collected from the employee. An employer is relieved of liability to any other person for the amount of tax withheld and paid to the district director or deposited with a designated depository of the United States as provided in Regulations § 31.3403-1.

Please refer to the enclosed Publication 15, Circular E, Employer's Tax Guide, page 14, for further clarification of an employer's responsibilities for sending to the Service certain copies of exemption certificates.

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If you have any questions, please do not hesitate to call
at (202) 622-6040.

Sincerely,
Lynne Camillo
Chief, Employment Tax Branch 2
Office of Assistant Chief Counsel
(Exempt Organizations/Employment
Tax/Government Entities)

Enclosure (1)